Calendar No. 228

100TH CONGRESS
1st Session

SENATE

REPORT
100-102

PREVENTING UNITED STATES INVOLVEMENT IN HOSTILITIES IN THE PERSIAN GULF

JULY 7 (legislative day, JUNE 23), 1987.—Ordered to be printed

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Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1327]

The Committee on Foreign Relations, to which was referred the bill (S. 1327) to prevent U.S. involvement in hostilities in the Persian Gulf, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The principal purpose of this bill is to avoid greater U.S. involvement in the Persian Gulf hostilities by prohibiting the implementation of any agreement under which vessels owned by a Persian Gulf nation would be registered under the U.S. flag.

COMMITTEE ACTION

On June 4, 1987, Senators Pell, Hatfield, and Cranston introduced S. 1327, a bill to prevent U.S. involvement in hostilities in the Persian Gulf which was referred to the Committee on Foreign Relations.

The committee held an open hearing on S. 1327 on June 16, 1987. Testifying before the committee were Congressman Charles Bennett, Chairman of the Seapower Subcommittee, House Armed Services Committee; Michael Armacost, Under Secretary for Political

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Affairs, Department of State; Richard L. Armitage, Assistant Secretary of Defense for International Security Affairs; Rear Adm. John W. Kime, Chief, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard; Robert Hunter, former member of the National Security Council and Senior Fellow at the Center for Strategic and International Studies; Walter Berns, John M. Olin University Professor, Georgetown University, and Senior Fellow, American Enterprise Institute; Karl Landgrebe, Special Assistant to the President, National Marine Engineer's Association; and Frank Pecquex, Legislative Director, Seafarers International Union of North America, AFL–CIO.

On June 17, 1987, the committee held a closed hearing on S. 1327. Testimony was received from Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs; and from Vice Adm. Powell F. Carter, Director, Joint Chiefs of Staff, Department of Defense.

On June 23, 1987, the committee held a closed session with representatives of the Central Intelligence Agency on the Iranian threat.

Prior to introduction of S. 1327 the committee held one open and two closed hearings on the proposed convoying of certain Kuwaiti oil tankers and on Persian Gulf policy.

On March 31, 1987, Assistant Secretary of State Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs, testified before the committee in closed session on the administration's proposal to convoy certain Kuwaiti ships.

On May 19, 1987, the committee received testimony in closed session on the attack on the U.S.S. *Stark* and the proposed reflagging of certain Kuwaiti ships from Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs; Lt. Gen. Richard A. Burpee, Director of Operations, Joint Chiefs of Staff; Michael J. Matheson, Deputy Legal Advisor, Department of State; Capt. James C. Card, Chief, Merchant Vessel Inspection and Documentation Division, U.S. Coast Guard.

On May 29, 1987, the committee heard witnesses in open session on the attack on the U.S.S. *Stark* and Persian Gulf policy. Testifying before the committee were Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs; Richard Armitage, Assistant Secretary of Defense for International Security Affairs; and Adm, Henry C. Mustin, Deputy Chief of Naval Operation for Plans, Policy and Operations.

The committee marked up S. 1327 on June 25, and June 30. On June 30, the committee voted 11–8 to report S. 1327 favorably with an amendment in the nature of a substitute offered by Senator Murkowski and cosponsored by Senators Pell and Cranston. Ayes: Senator Pell, Biden, Sarbanes, Cranston, Dodd, Kerry, Simon, Sanford, Adams, Moynihan, and Murkowski. Nays: Senators Helms, Lugar, Kassebaum, Boschwitz, Pressler, Trible, Evans, and McConnell.

COMMITTEE COMMENTS

A. Reflagging Kuwaiti tankers

The administration has entered into an agreement with Kuwait under which 11 tankers owned by the Kuwaiti Oil Tanker Corp.

would be reregistered under the American flag and provided U.S. naval escorts through the Persian Gulf. The committee believes the agreement is poorly conceived and dangerous. Implementation of the agreement poses serious risks to important U.S. interests but will provide few benefits.

In seeking a reflagging arrangement, Kuwait is pursuing it own agenda to end the Iran-Iraq War. Since the outbreak of the war in 1980, Kuwait has served as Iraq's ally, financier, and port. Over the last 6 months, the fortunes of war have shifted against Kuwait's ally, Iraq. Abetted by American-supplied weapons, the Iranians have been threatening to break through Iraq's defenses in and around Basra. Were such a breakthrough to occur, Kuwait would find itself virtually defenseless in the face of a triumphant and vengeful Iran.

Reflagging is part of a desperate Kuwaiti gambit to draw the superpowers into the Iran-Iraq War in hopes they might end it. To the chagrin of its Persian Gulf neighbors, Kuwait has asked both the United States and the Soviet Union to place their respective flags on Kuwait's imperiled ships. Interestingly, the Soviet Union declined and instead offered Kuwait a commercial lease of three Soviet tankers.

The Reagan administration, eager to restore a reputation tarnished by its covert arms sales to Iran, has embraced Kuwait's gambit. The committee does not believe Kuwait's interests are the same as those of the United States. Further, the committee does not believe that compensating for the folly of last year's Iran arms sales policy is sufficient reason to endanger the lives of American servicemen in the Persian Gulf.

The risk of reflagging Kuwait's tankers is substantial. Because of Kuwait's close association with Iraq, Iran is likely to see the reflagging and convoying as provocative. As numerous witnesses advised the committee, Iran can respond in a variety of ways.

Iran has already demonstrated its ability to launch terrorist attacks against United States installations in the region, as evidenced by the suicide bombing of the Marine barracks in Beirut (1983), the two bombings of the U.S. Embassy in Beirut (1983 and 1984), and the attack on the U.S. Embassy in Kuwait (1984). Such attacks could be intensified and perhaps extended to targets in the United States. Iran might also choose to attack either the newly reflagged tankers or their United States naval escorts. While the Navy's ability to protect its ships is substantial, it is not, as the tragic attack on the *Stark* demonstrated, foolproof. Iran has a formidable weapon in the Chinese-supplied Silkworm missile. It could also launch suicide attacks with exposive-laden patrol boats.

The administration asserts that Iran has not attacked United States vessels and it would not make military sense for it do do so. In the committee's view, this significantly understates the danger of an attack. First, Iran's leaders have not always been guided by rational considerations. Second, in large measure as a result of President Reagan's efforts to trade arms for hostages, Iran perceives the United States as weak. The temptation to take advantage of this perceived weakness may be great. Finally, there are factions in Iran who may find a clash with the United States useful to their internal political goals. Indeed, some of Iran's military

assets in and along the Persian Gulf are controlled by the fanatical Revolutionary Guards.

Given the substantial risks of a United States-Iran clash that are inherent in the reflagging plan, the committee questions whether there are any countervailing benefits. Certainly the administration has failed to provide a clear and convincing rationale for this policy. Indeed, the policy is disturbingly reminiscent of administration actions in Lebanon, where American forces were deployed without a clearly defined mission, where the deployment was perceived as an American taking of sides in a regional conflict, where the risk or attack on U.S. forces was considerable, where the situation was not conducive to an effective American response, and where the consequent effect was to court a humiliating loss of American prestige.

The United States does have a vital interest in the security of Western oil supplies in the Persian Gulf region. Under current circumstances, this interest is not substantially threatened. The gulf war has affected only a tiny fraction of gulf shipping. Of the 30,000 ships to enter the gulf since attacks on shipping began in earnest in 1983, fewer than 300 have been attacked. There is no evidence that the shipping war is escalating.

So far, the sea war has not affected oil exports from the region, nor has it had any perceptible impact on prices. Because of pipelines, many regional states are less dependent on transit through the Strait of Hormuz to export oil than in the past.

By contrast, a United States-Iran conflict could jeopardize Western oil exports and supplies. A major conflict would affect all exports through the Strait of Hormuz. Perhaps more significantly, such a conflict could endanger the oil installations of the Arab gulf states aligned with the United States. In short, the present situation in the gulf poses little threat to Western oil supplies. If the reflagging leads to a United States-Iran conflict, the threat becomes substantially greater.

The administration has asserted that a United States failure to reflag Kuwait's tankers will benefit the Soviet Union. True, the Soviets might obtain some propaganda advantage from a decision to bar reflagging, although this pales in comparison to the propaganda bonanza provided by the administration's arms sales to Iran. Beyond this, however, Soviet opportunities for gain are minimal. The conservative Arab gulf states—whose existence is predicated on the twin pillars of Islam and unbridled capitalism—simply will not find the Soviet Union a comfortable security partner. Even if the Soviets were to reflag Kuwait's tankers—and the Soviets have approached this issue cautiously—they will not get bases or even significant port access in return.

Ironically, the principal opportunity for Soviet gain in the region lies in the United States-Iran conflict which the reflagging policy could help to invite. The Soviets could use such a clash either to restore a badly strained relationship with Iran or, conceivably, to make long-sought territorial gain at Iranian expense. In either case, however, the underlying premise is clear: The Soviet Union stands to gain from instability in the Persian Gulf, and reflagging contributes to instability.

As to the immediate issue of protecting gulf shipping, it bears emphasis that the administration's reflagging plan is highly selective. It will benefit only 11 Kuwaiti-owned tankers flying an American flag of convenience. Ironically, it will provide no protection to American-owned ships flying a flag of convenience of another country. In choosing to reflag, the administration apparently did not consider other, less risky options. These include the use of bona fide American vessels chartered to carry noncontraband cargo to the Arab Persian Gulf nations.

S. 1327 provides Congress the means to make a decision on the administration's proposal to reflag the 11 Kuwaiti tankers. Because of the risks inherent in the reflagging proposal, the committee considers this decision to be of paramount importance. The United States has vital interests in the Persian Gulf. Proceeding with the administration's reflagging program may jeopardize those interests as well as unnecessarily risk the lives of American servicemen.

B. Diplomatic initiatives to end the Iran-Iraq War

The real threat to Western interests in the Persian Gulf region comes form the continuation of the Iran-Iraq War. Of the nonbelligerents, Kuwait is the most threatened but the conflict could engulf the entire region. Ending the war should therefore be a matter of the highest priority for the United States and its allies.

The committee endorses President Reagan's initiative at the United Nations Security Council. Because both superpowers share an interest in ending the war, the United Nations can play an effective role in this crisis. The committee believes a Security Council resolution calling for a ceasefire in the Iran-Iraq War should be promptly followed by mandatory sanctions against any party that does not participate in negotiations leading to a ceasefire.

The committee also believes the administration should revive "Operation Staunch", the United States-initiated effort to halt arms sales to Iran. In particular, the committee is concerned about China's sale of Silkworm missiles to Iran. These missiles pose a real threat to vital U.S. interests and therefore are an unacceptable action on the part of an ostensibly friendly nation.

The committee recognizes that President Reagan's sales to Iran of Hawk antiaircraft missiles and TOW antitank missiles has undermined the administration's ability to make credible representations in Beijing about Chinese arms sales to Iran. The committee has included language calling on the administration to use its influence with the Chinese, including leverage provided by the sale of F-8 avionics, to seek a halt in Chinese arms sales to Iran. The Chinese Government should not doubt the seriousness of the concern in Congress or among the American people about its actions.

SECTION-BY-SECTION ANALYSIS

Section 1. Congressional findings

This section consists of congressional findings that: (1) The security and stability of the Persian Gulf are vital to United States and Western interests; (2) the Iran-Iraq War threatens commerce in the Persian Gulf and the right of free navigation in international waters; (3) the introduction of Chinese-origin Silkworm missiles

into the Persian Gulf conflict has escalated the threat to neutral commerce; (4) other nations are engaged in the practices of providing naval protection to their own ships in the Persian Gulf including ships leased to Persian Gulf nations; and (5) the placing of the United States flag on ships belonging to countries that are not strictly neutral in the Iran-Iraq War could risk involving the United States in that war.

Section 2. United States neutrality

This section consists of a congressional declaration of United States neutrality in the Iran-Iraq War. It also contains an expression of congressional support for the use of U.S. naval forces to protect the right of American vessels to innocent passage through the international waters of the Persian Gulf and for United States participation in collective efforts by the Western allies and other neutral nations to protect neutral rights.

Section 3. Diplomatic initiatives to end the Iran-Iraq War

This section calls on the President to take steps through the United Nations Security Council to obtain a ceasefire in the Iran-Iraq War and a return by both combatants to internationally recognized boundaries. The President is further urged to seek a mandatory United Nations Security Council arms embargo and economic sanctions against any combatant which fails to cooperate in the establishment of a negotiated ceasefire. This section also states that the United States should use its influence with the People's Republic of China, including leverage provided by the sale of advanced fighter aircraft avionics equipment with government financing, to stop Chinese arms sales to Iran.

Section 4. Prohibition on agreement to register certain vessels.

This section prohibits for a 12-month period the expenditure of funds to implement any agreement with a country bordering the Persian Gulf under which any vessel owned by such a country or by a national of such a country is registered under the U.S. flag.

COST ESTIMATE

Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate requires that committee reports on bills or joint resolutions contain a cost estimate for such legislation in the fiscal year it is reported and in each of the following 5 years. The Congressional Budget Office has prepared the following estimate for S. 1327.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 2, 1987.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1327, a bill to prevent U.S. involvement in hostilities in the Persian Gulf, as ordered reported by the Senate Committee on Foreign Relations on June 30, 1987.

Based on this review, it is expected that no additional cost to Federal, State, or local government would be incurred as a result of enactment of this legislation.

With best wishes,

Sincerely,

ROBERT F. HALE
(For Edward M. Gramlich, Acting Director).

EVALUATION OF REGULATORY IMPACT

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has concluded that there is no regulatory impact from S. 1327.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the committee notes that no changes are made by this bill.

ADDITIONAL VIEWS OF MESSRS. HELMS, LUGAR, KASSEBAUM, BOSCHWITZ, TRIBLE, EVANS, AND McCONNELL

THE AMERICAN INTEREST IN THE PERSIAN GULF

The United States has vital and longstanding interests in the Persian Gulf region. For nearly 40 years, American policy in the region has sought to protect the flow of oil, provide support for moderate Arab States, and contain the spread of radical forces. Over this period, there has been widespread bipartisan support in Congress for this policy.

The need to maintain this policy is underscored by the fact that 70 percent of the world's proven oil reserves are in the gulf region with the economies of the industrialized nations heavily dependent on this oil.

On a percentage basis, the United States is not nearly as dependent upon oil shipped through the Persian Gulf region as are friends such as Japan and France. As has been pointed out by the Congressional Research Service, our country is only dependent upon such oil for about 5.5 percent of our consumption while Japan and France are dependent on this oil for about 47.7 and 26.3 percent of their needs respectively.

Regardless of who is more or less dependent on this oil, the fact remains that if the production of oil is disrupted anywhere, prices rise for all consumers, and all Western economies are adversely affected.

Because the health of the American economy is so dependent on the free flow of Persian Gulf oil, our country has historically maintained a clear and continuous military presence in the gulf. In addition to the naval presence, the United States has maintained a strong political and diplomatic presence specifically aimed at promoting the security and stability of the moderate states of the region.

SOVIET INTERESTS IN THE PERSIAN GULF

The Soviet Union's interest in the Persian Gulf region is diametrically opposed to that of the United States. Politically, and strategically, its interest is to exploit the dependency of Western economies on this oil by undermining the stability of oil-producing countries and creating or promoting discord in the region whenever possible.

Toward this goal, the Soviet Union has persistently worked to take advantage of United States difficulties in the region, and to exploit the opportunity created by the Iran-Iraq War. For example, in 1985, the Soviets established diplomatic relations with Oman and the United Arab Emirates. Over the past couple of years, they have worked at developing its contacts with Saudi Arabia. Most recently, the Soviets have brokered the reconciliation among the dif-

ferent elements of the Palestine Liberation Organization, have granted Egypt an additional 25 years to pay off $3 billion in Soviet military credits, and have made overt efforts to inject themselves into the Middle East peace process.

CONSEQUENCES OF S. 1327

The reflagging policy is not without risk. However, while many are quick to secondguess the wisdom of this policy, Congress has failed to offer any kind of realistic alternative policy to protect the threatened oil-producing states and to promote American interests among the moderate Arab nations.

S. 1327, if enacted, would effectively reverse the President's commitment to protect 11 Kuwaiti tankers through reflagging. To undercut the President's foreign policy in such a manner seriously disadvantages our ability to influence events in the Persian Gulf.

If the United States backs down on its commitment to flag Kuwaiti tankers, it would prompt moderate Arab states in the region to further question the value of American commitments and friendship. There is no doubt that the Soviets would seize this opportunity and use propaganda or whatever other methods are available to them to exploit these doubts in the Arab world for their own advantage.

If Congress were to suspend the reflagging—as is envisioned in S. 1327—it would also appear as though the United States were "cutting and running" in the face of Iranian threats. To some, it would signal American weakness. History has shown such signals only encourage aggression on the part of repressive regimes such as are found in the Soviet Union and Iran.

This legislation has longer term consequences as well, as the bill restricts U.S. flexibility in the region for a 12-month period. Specifically, S. 1327 prohibits the reflagging of any vessel owned by any national of any country bordering the Persian Gulf. This means that no matter what happens in the gulf during the coming year, the President would be prohibited from entering agreements to provide protection for nonbelligerent shipping in the gulf in this manner—unless, of course, Congress can be persuaded to change the law.

Yet, situations change quickly, leaving little time for response. A 12-month prohibition unduly limits America's ability to respond to changing circumstances in the gulf. Even if Congress desired to lift the prohibition, we may not be able to do so, or to do so in a timely fashion. During the prescribed 12-month moratorium, Congress may not be in session for long periods; in some instances, we may be in recess for as long as 3 months. During these periods, Congress would have no recourse to this prohibition—regardless of the situation in the Persian Gulf.

S. 1327 has great potential for jeopardizing American interests in the Persian Gulf specifically, and in the Middle East as a whole. We do not believe this bill is in the best interests of the United States and will urge our colleagues to oppose the legislation when it comes before the full Senate.

JESSE HELMS.
RICHARD G. LUGAR.
NANCY LANDON KASSEBAUM.
RUDY BOSCHWITZ.
PAUL TRIBLE.
DANIEL J. EVANS.
MITCH MCCONNELL.

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Calendar No. 235

100TH CONGRESS
1st Session

SENATE

REPORT
100-106

PERSIAN GULF AND THE WAR POWERS RESOLUTION

JULY 10 (legislative day, JUNE 23), 1987.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1343]

The Committee on Foreign Relations, to which was referred the bill (S. 1343) to require that the use of United States Armed Forces to escort, protect, or defend certain reregistered vessels in the Persian Gulf comply with the War Powers Resolution, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

PURPOSE

The purpose of this bill is to require that the use of U.S. Armed Forces to escort, protect or defend certain reregistered vessels in the Persian Gulf comply with the War Powers Resolution.

BACKGROUND

The Persian Gulf became an active war zone with the advent of the Iran-Iraq War on September 20, 1980. That war has become one of the century's bloodiest, claiming somewhere between 500,000 and 1 million casualties in the past 6½ years. As the war has progressed, and as each side has become more desperate in its efforts to cut off the economic lifeblood of the other, shipping through the gulf has become a target. Since the spring of 1984, when both Iran and Iraq declared shipping to be "fair game" in the conflict, at

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least 200 ships, many of them oil tankers, have been attacked. The attack on the U.S.S. *Stark* was the first known attack on a U.S. ship in the gulf.

The following chart illustrates the degree to which shipping in the gulf has been threatened by the Iran-Iraq conflict:

SHIP ATTACKS IN THE PERSIAN GULF, 1981 TO MARCH 1987

Year	Nation launching attack		Yearly total
	Iraq	Iran	
1981	5	0	5
1982	22	0	22
1983	16	0	16
1984	53	18	71
1985	33	14	47
1986	66	41	107
1987 (January–March)	24	22	46
Totals	219	95	314
Percentage	70	30	

Strategically, the gulf is important because it is bordered by countries with at least 50 percent of the world's known oil reserves, and because almost 20 percent of the world's oil production passes through it daily. Although only 6.8 percent of the U.S. oil supply flows through the gulf, Japan and Western Europe are much more heavily dependent on this region for their supplies. Approximately 54 percent of Japan's oil and 41 percent of Western Europe's originates in the Persian Gulf.

The vulnerability of the gulf to the disruption of shipping is acute. Access to the gulf is limited to two 3-mile wide channels, located in Omani waters but within easy artillery and missile range of Iranian territory. Iran's recent purchase of Silkworm missiles produced in the People's Republic of China provides it with the capability of threatening all shipping through these channels.

Of the two belligerents, Iran is almost completely dependent on tankers to carry its oil exports. For the last 5 years, Iran has shipped about 1.5 to 1.8 million barrels a day by sea. Heavy Iraqi attacks drove exports down to about 700,000 barrels a day in the last half of 1986, but the level of attacks was eased late last year and exports are back up to an estimated 1.5 million barrels a day.

Iran destroyed Iraq's Basra complex in the fall of 1980 and Iraqi exports collapsed. A pipeline through Turkey opened in 1982 and carried 1 million barrels a day. It was expanded in 1986 to a capacity of 1.3 million barrels daily. A link with a Saudi pipeline was made in 1986, and it handles 500,000 barrels a day. A parallel pipeline through Turkey will increase exports through that outlet to 2.2 million barrels daily this year and the Iraqis are currently negotiating with the Saudis for construction of a pipeline to handle Iraqi oil only. As a result of these activities, Iraq now exports more oil than Iran and has excellent prospects of widening the gap.

Kuwait has become a target for the Iranians in their protracted war with Iraq largely because of Kuwait's financial support for the Iraqis, and its willingness to use its territory for transshipment of

war materiel. There have been at least three occasions of Iranian incursions on Kuwaiti territory, including shelling of Kuwait from the Iranian-occupied Iraqi Faw Peninsula, and one aerial bombing of a border checkpoint. Iranian-influenced terrorist groups have conducted a series of bombings and attacks. Kuwaiti-owned ships have been favorite targets of the Iranian air force, leading the Kuwaitis to seek United States protection of ships in their gulf tanker fleet. The Soviets agreed in February of this year to charter three tankers to carry Kuwaiti oil and the United States has committed itself to registering 11 Kuwaiti-owned tankers under American flags.

The U.S. agreement to provide this protection for Kuwaiti tankers operating in the gulf came under renewed congressional scrutiny after May 17 when an Iraqi Mirage F-1 fired two French-made Exocet missiles at an American frigate, the U.S.S. *Stark,* killing 37 men aboard and crippling the vessel.

THE "STARK" INCIDENT

According to Navy officials, the U.S.S. *Stark* had no reason to expect an attack because it was located at least 40 miles south of the main war zone of the ongoing Iran-Iraq conflict. At 8 p.m. gulf time, United States-manned AWACS operating in Saudi Arabia picked up the track of an Iraqi Mirage F-1 fighter plane as it departed its base at an airfield in Basra. Shortly thereafter, the radar onboard the U.S.S. *Stark* also picked up the plane, which was then about 200 miles from the ship. The Mirage jet headed for the *Stark* at a speed of 550 miles per hour. At 10:09 p.m. the *Stark*'s captain ordered his radio operator to contact the Mirage requesting it identify itself. Within 36 seconds, a second message requesting identity and a statement of intentions was sent. No response was received to either radio message. At 10:10 p.m. the Iraqi plane, within 12 miles' range of the *Stark,* fired two French-made Exocet AM39 air-to-surface missiles.

The ship's radars did not detect the incoming missiles, and the Phalanx terminal defense system was not activated. The U.S.S. *Stark* learned it was under attack only when the ship's lookout saw an incoming missile just 15 feet above the water heading for the vessel. Ten seconds after his warning, the first missile found its target.

Although the Iraqi Government issued an apology for the "unintentional incident" and agreed to pay damages to the United States for the attack on the *Stark*, serious questions about the reason for the attack, the failure of the technology onboard the ship, and the mission of the frigate in the gulf remain unresolved. The *Stark* was at condition three, the middle level of the five-tier alert system which would have required that its weapons systems be fully manned and operational. Why they were not and why the radar onboard the frigate failed to detect incoming missiles, remains unanswered questions.

In addition, lacking air cover, the *Stark* seemed to be ill-prepared to accomplish its ostensible mission of "deterrence" in the war-infected gulf. If the presence of the American warships was to keep shipping protected from attacks, it should be explained how more than 40 vessels have been hit by Iraqi or Iranian planes or mines

so far this year, including an Iranian gunboat attack on a Soviet freighter on May 6. If, on the other hand, the presence of United States vessels such as the *Stark* is designed to "show the flag" in the gulf region, then the success of the Iraqi attack, however inadvertent, exposes the dangers inherent in such a mission when a war rages between the two biggest military powers in the region.

KUWAITI PROTECTION PROGRAM

Ambassador Richard Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs, informed the committee on May 19, 1987, that the Kuwaitis had in December requested help in dealing with the continued attacks by Iran on tankers. The President agreed to help. Accordingly, Mr. Murphy testified:

> In the context of these developments, Kuwait asked to register a number of ships in its tanker fleet under the U.S. flag. We informed Kuwait that if the vessels in question met ownership and other technical requirements under U.S. laws and regulations, they could be registered under the U.S. flag. This is in accordance with our established position on qualifications for U.S.-flag registration of commercial vessels in general. We also informed the Kuwaitis that by virtue of the fact that these vessels would fly the American flag, they would receive the U.S. Navy protection given any U.S.-flag vessel transiting the gulf. The U.S. Navy has always had the mission to provide appropriate protection for U.S. commercial shipping worldwide within the limits of available resources and consistent with international law.

It is unclear the extent to which the new plan is a reaction to the Kuwaiti decision to enter into an agreement with the Soviet Union to charter three long-haul Soviet-flag vessels to transport oil out of the gulf. According to Mr. Murphy, the United States arrangement with the Kuwaitis "will limit Soviet advances in the region." He added that the Soviets would have welcomed the opportunity to replace us and use the position to expand further their role.

Moreover, there is the question whether the tanker protection proposal is also related to the problems in gulf relations brought on by the clandestine U.S. provision of arms to Iran and the resulting Iran-Contra affair. The gulf states are nervous about the Iranian advances in the war, and the administration decision to help Iran seems to have exacerbated fears and uncertainties.

U.S. COMMITMENT AND CAPABILITIES

The administration has downplayed the possibility that active involvement in protecting shipping could draw the United States into conflict with Iran. There have been press reports that Ambassador Murphy was rebuked by the White House when he warned Iran that attacks on United States naval forces could bring on a direct conflict with Iran. If such is not the case, then it is not clear just what the response to attacks would be. If the orders were simply to defend against direct attack by dealing only with the attacking

missile or the craft launching it, it is not clear how such an approach could be effective in saving ships and crews from harm. The administration claims to be seeking deterrence, but it has not addressed the question of what would happen if deterrence fails. Another tragic attack could be expected to increase powerful pressures to retailiate. Certainly, in the event of losses, a policy of constrained response could lead to public outrage.

If the United States were drawn into a wider conflict, it is impossible to say where it might lead. Iran, even if limited in its capability to respond in a conventional way, could well escalate terrorist activities in the Middle East and elsewhere. Given these risks, it is unclear just what American forces might be deployed and how. It would be very difficult, if not impossible, to provide even modest air cover on a sustained basis in the upper gulf from carriers in the Indian Ocean. Secretary of Defense Weinberger stated in a television interview on May 24 that basing rights for the protection of air cover with its logistical support would be "a very desirable addition" if Kuwaiti-owned ships were to be successfully protected. The United States has no known aircraft basing agreements with any of the Arab states in the region. The only large U.S. war stockpiles in the region are in facilities in Oman built at a cost of $300 million. Omani permission is needed for those reserves to be used in military operations, and the Omanis are very sensitive to the threat to them posed by Iran.

WAR POWERS RESOLUTION

In the United States, the power to conduct warfare is constitutionally divided between the President and the Congress. Congress has the power to declare war, provide armed forces, and finance military operations. The President has power as Commander-in-Chief of U.S. Armed Forces.

During the Vietnam war, Congress became increasingly concerned about its diminishing influence on the use of the Armed Forces. In an effort to reassert its warmaking authority, Congress enacted the War Powers Resolution in 1973. This legislation enables Congress to limit the use of force by the U.S. Government by requiring the President to obtain congressional approval before introducing troops into hostile or potentially hostile situations abroad for more than 60 days. It was intended to reduce the chances of an overzealous President involving the United States in an unwanted war. As stated in the committee's report (S. Rept. 93-220), this law was an attempt "to fulfill—not to alter, amend, or adjust—the intent of the framers of the U.S. Constitution in order to insure that the collective judgment of both the Congress and the President will be brought to bear in decisions involving the introduction of the Armed Forces of the United States in hostilities or in situations where imminent involvement in hostilities is indicated by circumstances."

The War Powers Resolution sets forth the following procedure:

Prior to the introduction of American troops "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," the President is required to consult with the Congress "in every possible instance."

After troops are introduced, in the absence of a declaration of war, the President is required to submit a report to Congress within 48 hours.

After the expiration of 60 days—or in special circumstances 90 days—the involvement of troops is to be terminated, unless Congress has taken affirmative action to approve the President's action.

The resolution also provides that Congress can terminate U.S. involvement before the expiration of the 60-day period by passing a concurrent resolution. However, this part of the resolution has been effectively nullified by the ruling of the *Chadha* decision (103 S.Ct. 2764) which raised serious questions about the constitutionality of the legislative veto.

COMMITTEE AMENDMENT

In accordance with the War Powers Resolution, within 48 hours of the introduction of U.S. troops into a war powers situation, the President is required to report to Congress on the "circumstances necessitating" their introduction, his "constitutional and legislative authority" for doing so, and the "estimated scope and duration of the hostilities or involvement." Under this law, the President might make such a report under one of two possible provisions: 4(a)(1) or 4(a)(2). The former provision deals with "hostilities" or "situations where imminent involvement in hostilities is clearly indicated by the circumstances," while section 4(a)(2) refers to nonhostile situations. The significance of choosing one provision over the other is that the 4(a)(2), or nonhostile situation, does not invoke either the prior consultation requirements of section 3 or the subsequent 60-day time limitations of section 5(b).

The committee amendment, offered by Senator Adams, specifically indicates that a Presidential report should be submitted in accordance with section 4(a)(1).

COMMITTEE ACTION

The committee was briefed on the intention of the administration to reflag 11 Kuwaiti tankers by Assistant Secretary of State Richard Murphy on March 31, 1987.

On May 19, 1987, the committee met in closed session with representatives of the Department of Defense and the Department of State on the attack on the U.S.S. *Stark*.

On May 21, 1987, in an effort to more actively involve the Congress in the critical decisionmaking process, Senator Claiborne Pell, Chairman of the Foreign Relations Committee, sent a letter to the Secretary of State urging the administration to comply with the provisions of the War Powers Act. A copy of this communication and the administration's reply is reprinted as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, May 21, 1987.

Hon. GEORGE P. SHULTZ,
Secretary of State,
Washington, DC.

DEAR MR. SECRETARY: I am writing to you with respect to the Administration's Persian Gulf policy and its War Powers implications.

The facts that a U.S. naval vessel has been attacked by Iraqi aircraft and that, since September, 24 vessels serving Kuwaiti ports have been assaulted by Iranian aircraft vividly illustrate that U.S. troops are being placed in a situation "where imminent involvement in hostilities is clearly indicated by the circumstances." Moreover, the Administration has recently announced: (a) that it will protect Kuwaiti tankers and provide them with U.S. registration; and (b) that U.S. naval forces in the Gulf have been instructed to fire on all aircraft exhibiting hostile intent.

These developments clearly activate the provisions of the War Powers Resolution. The Administration should take immediate steps to comply with the law and submit a report in accordance with Section 4(a)(1) of the War Powers Resolution. I would appreciate your response at the earliest possible date.

With every good wish.

Ever sincerely,

CLAIBORNE PELL, *Chairman.*

U.S. DEPARTMENT OF STATE,
Washington, DC, June 19, 1987.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: I am responding to your letter dated May 21 to the Secretary concerning developments in the Persian Gulf and the provisions of the War Powers Resolution.

We are paying close attention to the question of the possible applicability of the War Powers Resolution to the situation in the Gulf and remain committed to full and continued consultation with the Congress. In our view, the War Powers Resolution is not applicable under present circumstances. This is not a situation where imminent involvement of U.S. Armed Forces in hostilities is clearly indicated by the circumstances. Prior to the attack on the U.S.S. *Stark*, there had never been an attack on a U.S. vessel in the Gulf, and the attack on the U.S.S. *Stark* was evidently the result of a targetting error rather than a deliberate decision to attack a U.S. vessel. The object of the escorting of the reflagged tankers will be to deter, not to encourage, hostile action. We do not believe that there is a basis for concluding at this time that "imminent involvement in hostilies is clearly indicated by the circumstances."

We will continue to keep the situation under active review from this standpoint and will continue to consult with the Congress on significant developments.

Sincerely,

J. EDWARD FOX,
Assistant Secretary,
Legislative and Intergovernmental Affairs.

On May 29, 1987, the committee heard witnesses in open session on the attack on the U.S.S. *Stark* and Persian Gulf policy. Testifying before the committee were Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs; Richard Armitage, Assistant Secretary of Defense for International Security Affairs; and Adm. Henry C. Mustin, Deputy Chief of Naval Operations for Plans, Policy and Operations.

On June 4, 1987, Senators Pell, Hatfield, and Cranston introduced S. 1327, a bill to prevent United States involvement in hostilities in the Persian Gulf which was referred to the Committee on Foreign Relations.

On June 9, 1987, Senator Hatfield, on behalf of himself and Senators Bumpers, Pell, Harkin, and Matsunaga, introduced S. 1343, requiring that the use of U.S. Armed Forces to escort, protect, or defend reflagged vessels in the Persian Gulf comply with the War Powers Resolution. Senators Adams and Leahy have cosponsored this legislation.

The committee held an open hearing on S. 1327 on June 16, 1987. Testifying before the committee were Congressman Charles Bennett, Chairman of the Seapower Subcommittee, House Armed Services Committee; Michael Armacost, Under Secretary for Political Affairs, Department of State; Richard L. Armitage, Assistant Secretary of Defense for International Security Affairs; Rear Adm. John W. Kime, Chief, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard; Robert Hunter, former member of the National Security Council and Senior Fellow at the Center for Strategic and International Studies; Walter Berns, John M. Olin University Professor, Georgetown University, and Senior Fellow, American Enterprise Institute; Karl Landgrebe, Special Assistant to the President, National Marine Engineer's Association; and Frank Pecquex, Legislative Director, Seafarers International Union of North America, AFL-CIO.

On June 17, 1987, the committee held a closed hearing on S. 1327. Testimony was received from Richard W. Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs; and from Vice Admiral Powell F. Carter, Director, Joint Chiefs of Staff, Department of Defense.

On June 23, 1987, the committee held a closed session with representatives of the Central Intelligence Agency on the Iranian threat.

On June 25 and June 30, the committee considered S. 1327 and S. 1343. On June 30, the committee accepted the amendment to S. 1343 offered by Senator Adams and ordered the bill, as amended, favorably reported to the Senate by a vote of 10 to 9. Yeas: Senators Pell, Biden, Sarbanes, Cranston, Dodd, Kerry, Simon, Sanford, Adams, and Moynihan; Nays: Senators Helms, Lugar, Kassebaum, Boschwitz, Pressler, Murkowski, Trible, Evans, and McConnell.

COMMITTEE COMMENTS

The tragic attack on the U.S. frigate underscores the danger to all international shipping in the Persian Gulf—through which more than half of the West's oil supplies flow—posed by the protracted conflict between Iran and Iraq.

This tragedy raises serious questions about the U.S. role in the gulf. Both Iran and Iraq during the course of this 7-year war have attacked hundreds of ships coming in and going out of the gulf. The presence of U.S. naval vessels has not stemmed these attacks in any visible way.

These questions are made even more compelling by the administration's decision to register 11 Kuwaiti oil tankers under American flags. What happens if one or more of these ships is also attacked? Clearly the object of American rather than Kuwaiti registry is to protect these ships from attack. And if that objective fails, what then?

We do not want to be dragged into a shooting war in the Persian Gulf if it can be avoided. Neither do we want to become a party to the Iran-Iraq War—a bloody conflict that has reportedly cost a million lives already. It is imperative that we proceed very carefully.

As Senator Brock Adams, a cosponsor and proponent of S. 1343 within the committee, has stated:

> No one wants to abandon the Persian Gulf. But no one should want to be sucked into widening hostilities without a realistic analysis of the threats we face and what it may cost. The only thing worse than walking away from that region now would be to walk into it without fully considering the consequences of our actions. The War Powers Act would require us to consider those consequences.
>
> By triggering the War Powers Act—and requiring the President to have specific congressional approval for continuing U.S. commitment—we will create conditions that will force the administration to give Congress and the country an analysis of the possible ramifications of its policy in the gulf. They will no longer be able to avoid that issue by hiding behind a denial that imminent hostilities are possible. Once we dispose of that fiction, and once cost considerations are on the table, the War Powers Act will allow Congress and the country to give the President a clear and definitive statement about the Nation's willingness to take the risks associated with entering that war zone.
>
> No one disputes the desirability of achieving our goals in the region if they can be achieved simply by sending additional ships into the gulf. But we need to know if those same goals are as desirable if the cost of securing them is the loss of more American lives and an increased probability of an armed conflict with Iran.

COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides the following esti-

mates of the cost of S. 1343, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 1, 1987.

Hon. CLAIBORNE PELL,
Chairman, Committee of Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1343, a bill to require that the use of U.S. Armed Forces to escort, protect, or defend certain reregistered vessels in the Persian Gulf comply with the War Powers Resolution, as ordered reported by the Senate Committee on Foreign Relations on June 30, 1987.

Based on this review, it is expected that no additional cost to Federal State, or local government would be incurred as a result of enactment of this legislation.

With best wishes,
Sincerely,

ROBERT F. HALE
(For Edward M. Gramlich, Acting Director).

EVALUATION OF REGULATORY IMPACT

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has concluded that there is no regulatory impact from S. 1343.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the committee notes that no changes are made by this bill.

ADDITIONAL VIEWS OF MESSRS. HELMS, LUGAR, BOSCHWITZ, MURKOWSKI, AND McCONNELL

THE WAR POWERS ACT AND S. 1343

Section (a) of S. 1343, proclaims a congressional finding that "the introduction of U.S. Armed Forces into the Persian Gulf for the escort, protection, or defense of any vessel which has been reregistered under the United States flag and which was owned by the government or nationals of any country bordering the Persian Gulf as of June 1, 1987, requires the transmittal to Congress" of a report under section 4(a)(1) of the War Powers Act.

Under this section of the War Powers Act, if U.S. Armed Forces are introduced "into hostilities or into situations where imminent involvements in hostilities is clearly indicated by the circumstances", the President is required to submit a report to Congress within 48 hours outlining the circumstances necessitating the introduction of U.S. Armed Forces, the constitutional and legislative authority under which the forces were introduced, and the estimated scope and duration of the hostilities or involvement.

Within 60 days of the submission of this report, the statute requires the President to terminate the use of U.S. Armed Forces unless Congress has either declared war or has enacted a specific authorization, or has extended the 60-day period by law, or is physically unable to meet as a result of an armed attack on the United States.

If the President does not voluntarily provide the report encouraged in section (a) of S. 1343, then section (b) of the committee bill provides for automatic application of the provisions of the War Powers Act—presumably those provisions conditionally requiring the President to terminate the use of U.S. Armed Forces. Under this section (b), the 60-day period is deemed to start 48 hours after the introduction of U.S. Armed Forces to escort, protect, or defend reflagging vessels.

CONSTITUTIONALITY OF THE WAR POWERS ACT

The proper role of the Congress and the executive branch in the condut of foreign affairs has been a running debate since the founding of our nation. The Founding Fathers established a complex system of checks and balances based on co-equal, separate and independent political branches in the Constitution. They also decided not to establish a precise and detailed line of demarcation between the foreign policy powers of the two branches.

Recognizing the existence of an ambiguity concerning the precise limits of executive and legislative authority pertaining to the use of force abroad, it does not follow that either branch has the unilateral power to determine the limits of the other's authority.

However, the War Powers Act, as a mere legislative act, seeks to take away authorities to conduct foreign policy which the President has properly exercised under the Constitution for almost 200 years. Section 5(b) of the Act specifically would deprive the President of his constitutional authority as Commander-in-Chief during a period of hostilities after a period of 60 days if the Congress remains silent on the matter.

The idea that Congress can by silence or inaction deprive the President of a fundamental expressed constitutional power—even in times of national emergencies—is incompatible with the system of separation of powers established by the Founding Fathers.

The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution. Indeed, attempts by Congress to modify its constitutional relationship with the executive branch by legislation have been firmly rejected by the U.S. Supreme Court in the past. (*Myers* v. *United States,* 272 U.S. 52 (1926)

REFLAGGING KUWAITI VESSELS DOES NOT TRIGGER WAR POWERS ACT

The committee bill is obviously aimed at addressing the Presidential Agreement to reflag 11 Kuwaiti ships. It calls for a congressional finding that the protection of these ships is tantamount to introducing U.S. Armed Forces into hostilities or into a situation where involvement in hostilites is imminent.

However, the reflagging of Kuwaiti vessels by the United States does not introduce our armed forces into hostilities or into a situation where involvement in hostilites is imminent. With respect to the Iran-Iraq War, the United States is a neutral party, and uninvolved in the hostilities. Neither Iran nor Iraq has declared war on the United States, and the one unprovoked attack on the United States—the unfortunate attack on the U.S.S. *Stark*—Appears to have been an isolated, and accidental attack.

Reflagging ships owned by Kuwait—which is also a non-belligerent in the war—does not change our neutral status. Under international law governing the operation of armed conflict, neutral ships have the right of free passage on the high seas unless a formal blockade exists. Thus, both the United States, and the Emirate of Kuwait are entitled to the freedom of navigation in the Persian Gulf.

The reflagging operation also does not currently bring us into hostilities. Kuwait is a non-belligerent, and is not involved in hostilities. The reflagging of Kuwaiti vessels does not, in itself, place U.S. Armed Forces into hostilities.

Some might point out that Kuwait supports Iraq in the war financially and suggest that this involves Kuwait in the hostilities. However, providing support to a belligerent does not make a country a belligerent itself, nor necessarily involves it in hostilities.

In addition, the reflagging operation does not make it imminent that the United States will become involved in the hostilities. Since the start of the "tanker war" in 1984, there have been some 300 attacks on ships. Out of these 300 attacks, 5 ships have been sunk, one of which was a tanker.

EFFECTS OF S. 1343

As the committee bill invokes the War Powers Act, it provides a 60-day "grace" period after which the reflagging operation would effectively have to cease without Congressional authorization. Thus, this legislation provides a mechanism by which Congress can second guess the administration's decision to reflagging operation.

If, in fact, Congress believes that the reflagging operation should be stopped, it should stand up now as the reflagging is getting underway. If by chance, Congress decides to second guess the President's decision 60 days after the fact, it would prove even more damaging to the President—and to America's foreign policy—than if the reflagging operation was to be stopped by Congress in its initial stages.

The dangers to our foreign policy of stopping the reflagging are great, but to cut the legs out from under this policy 60 days after the reflagging operations have been initiated creates even greater dangers. To undercut the President's foreign policy in such a manner would seriously disadvantage our ability to influence events in the Persian Gulf.

For the United States to back down on its commitment to reflag Kuwaiti tankers 60 days after it has been initiated, would cause countries throughout the world to seriously question the value of American commitments and friendship. There is no doubt that the Soviets would seize this opportunity and use propaganda or whatever other methods are available to them to exploit these doubts for their own advantage.

In addition, should the armed forces operating in the gulf be subject to any attacks—or even any direct threats—during these 60 days, it would appear as though the United States were "cutting and running" in face of these attacks or threats if Congress failed to sanction continued presence after the 60 days. This would only send a signal to the world of American indecision and vacillation and weakness.

S. 1343, moreover, sets a dangerous precedent for U.S. military operations elsewhere and at other times. By lowering the threshold of when the War Powers reporting is required, the triggering of the War Powers requirements may be applicable across a broad spectrum of the use of U.S. Military Force. We fear that S. 1343 would set into motion an expectation that U.S. military operations anywhere would require the War Powers test. If so, passage of S. 1343 would place an undue constraint on the exercise of U.S. military power which would be detrimental to U.S. security interests around the world.

S. 1343 calls for the application of a statute which may be unconstitutional. By so doing, it has the potential of forcing the President to remove the U.S. Armed Forces from the Persian Gulf 60 days after their being committed to protect U.S.-flagged foreign tankers. Passage of this legislation would harm America's position in the Persian Gulf, and greatly compromise the President's ability to conduct foreign policy. We will oppose the legislation when it comes before the full Senate.

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